Supreme Court, U.S.
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No. 97-1688

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1997

THE STATE OF COLORADO,
Petitioner,

vs.

MARIO ROMERO,
Respondent.

On Petition for Writ of Certiorari to
The Supreme Court of the State of Colorado

RESPONDENT'S BRIEF IN OPPOSITION

G. Paul McCormick, Jr.
Counsel of Record

McCormick & Christoph, P.C.
1406 Pearl Street, Suite 200
Boulder, Colorado 80302
(303) 443-2281

Counsel for Respondent

21 pp

QUESTION PRESENTED FOR REVIEW

Whether the respondent's statement, "I should talk to a lawyer," made near the beginning of the interrogation constituted an unambiguous request for counsel within the meaning of *Davis v. United States*, 512 U.S. 452 (1994).

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iii

SUMMARY OF THE ARGUMENT 1

REASONS WHY THE PETITION SHOULD BE DENIED 2

I. THE COLORADO SUPREME COURT PROPERLY IMPLEMENTED THE *DAVIS* STANDARD WHEN IT FOUND THE RESPONDENT'S REQUEST FOR COUNSEL TO BE UNAMBIGUOUS. 2

II. THIS COURT SHOULD NOT ABANDON THE TOTALITY OF THE CIRCUMSTANCES TEST WHEN DETERMINING WHETHER A REQUEST FOR COUNSEL IS UNAMBIGUOUS. 6

III. THE COLORADO SUPREME COURT HAS NOT JOINED A "MINORITY OF JURISDICTIONS SEEKING TO UNDERMINE THE DICTATES OF *DAVIS*." 8

CONCLUSION 14

TABLE OF AUTHORITIES

CASES

Brown v. State, 668 So.2d 102 (Ala. Cr. App. 1995) 12

Cannady v. Dugger, 931 F.2d 752 (11th Cir. 1991) 9, 10

Correll v. Thompson, 63 F.3d 1279 (4th Cir. 1995) 9

Davis v. United States, 512 U.S. 452 (1994) ..... i, 2, 3, 5-9, 12, 14, 15

Diaz v. Senkowski, 71 F.3d 61 (2nd Cir. 1996) 11

Diaz v. Senkowski, 76 F.3d 61 (2nd Cir. 1996) 11

Edwards v. Arizona, 451 U.S. 477, 482 (1981) 7, 8, 10, 14

Fare v. Michael C., 442 U.S. 707, 725 (1979) 7

Henry v. State, 462 S.E.2d 737 (Ga. 1995) 12

Higgins v. State, 879 S.W.2d 424 (Ark. 1994) 12

Johnson v. Zerbst, 304 U.S. 458, 464 (1938) 7

Lord v. Duckworth, 29 F.2d 1216 (7th Cir. 1994) 6, 7, 10, 11

Luallen v. State, 465 S.E.2d 672 (Ga. 1996) 12

Medina v. Singletary, 59 F.3d 1095 (11th Cir. 1995) 6, 7

Michigan v. Johnson, 475 U.S. 625, 633 (1986) 3

Midkiff v. Commonwealth, 462 S.E.2d 112 (Va. 1995) 12

North Carolina v. Butler, 441 U.S. 369 (1979) 7

Parker v. State, 917 P.2d 980, 983 (Okl. Cr. 1996) 13

Schneckloth v. Bustamante, 412 U.S. 218 (1973) 7

Smith v. Endell, 860 F.2d 1528 (9th Cir. 1988), *cert. denied*, 498 U.S. 981 (1990) ... 9, 10

State v. Jones, 914 S.W.2d 852 (Mo. App. 1996) 12

State v. Kennedy, 479 S.E.2d 838 (S.C. App. 1996) 12

State v. Morgan, 559 N.W.2d 603 (Iowa 1997) 12

State v. Parker, 886 S.W.2d 908 (Mo. 1994), *cert. denied*, 514 U.S. 1098 (1995) 10

State v. Wesley, 691 So.2d 772, 774 (La. App. 1997) 13

Tucker v. State, 491 S.E.2d 420, 421 (Ga. App. 1997) 13

United States v. Menzer, 29 F.3d 1223 (7th Cir. 1994) *cert. denied* 513 U.S. 1002 (1994) 12

United States v. Scurlock, (5th Cir. 1995) 6, 7, 11

Wyrick v. Fields, 459 U.S.42 (1982) 7

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The respondent, Mario Romero, respectfully requests this Court deny the petition for writ of certiorari, which seeks review of the Colorado Supreme Court's opinion in this case. That opinion is reported at ___ P.2d ____ (Colo. 1998) (Pet. app. A)

SUMMARY OF THE ARGUMENT

The Colorado Supreme Court correctly stated the standard in *Davis* and faithfully implemented it. The Court properly invoked the totality of the circumstances test to determine that the respondent's request for counsel was unambiguous. Primarily the Court looked to the actual words spoken by the respondent, "I should wait and I should talk to a lawyer." Colorado's request to abandon the totality of the circumstances test in *Edwards/Davis* situations is made without citing any authority. Finally, Colorado's assertion that the decision in *Romero* is aligned with a minority of jurisdictions, which are bent upon undermining *Davis* is unsupported by the very cases cited by Colorado. In the final analysis,

no such majority/minority split exists, but rather, the lower courts have diligently applied the *Davis* standard to a variety of situations, each one determined upon its own specific facts and circumstances. Accordingly, Colorado's petition for writ of *certiorari* should be denied.

REASONS WHY THE PETITION SHOULD BE DENIED

I. THE COLORADO SUPREME COURT PROPERLY IMPLEMENTED THE *DAVIS* STANDARD WHEN IT FOUND THE RESPONDENT'S REQUEST FOR COUNSEL TO BE UNAMBIGUOUS.

Colorado claims that the Colorado Supreme Court merely gave lip service to the standard found in *Davis v. United States*, 512 U.S. 452 (1994), and failed to properly implement it. However, a careful review of the record reveals the opposite. The Court specifically relied upon the standard announced by this Court in *Davis*.

> If the desire for counsel is presented "**sufficiently clearly** that a reasonable police officer **in the circumstances** would understand the statement to be a request for an attorney," no ambiguity or equivocation exists, and all questioning must cease until the person can consult with counsel or the accused voluntarily reinitiates conversation.
>
> *Romero* pet. app. A-11 (emphasis added by the Colorado Supreme Court; quoting from *Davis*, 512 U.S. at 459).

Elsewhere in the opinion, the Court stated, "[w]hether an accused has invoked the right to counsel during questioning is an objective inquiry" (pet. app. A-10) and that the request for counsel must be made "sufficiently clearly" (pet. app. A-21) (quoting from *Davis*, 512 U.S. at 459). The Colorado Supreme Court further reasoned,

> When invoking the right to counsel during custodial interrogation a person may **demand** an attorney, a person may **ask for** an attorney or a person may make some statement which can "reasonable be construed to be an expression of a desire for the assistance of an attorney."
>
> Pet. app. A-24, 25 (emphasis added by the Colorado Supreme Court, and quoting from *Davis*, 512 U.S. at 459).

It is in the latter category (the reasonable expression of a desire for the assistance of an attorney) that the Court placed the respondent's request for counsel. Pet. app. A-25.

Both the majority and the lone dissenting justice agreed that the totality of the circumstances test applies in determining whether a request for counsel is unambiguous.[1] That is consistent with this Court's ruling in *Davis*, that a "reasonable police officer **in the circumstances** would understand the statement to be a request for an attorney." *Davis*, 512 U.S. at 459 (emphasis added).

However, the "circumstances" relied upon by the Colorado Supreme Court, were not that far reaching, notwithstanding the assertions to the contrary made by Colorado. A fair reading of the decision is that the actual words uttered by the respondent constituted the unambiguous request. Those words were "I should wait and I should talk to a lawyer . . . because I do want to go to trial on this."[2] Indeed, the Colorado Supreme Court distilled this statement down to the simple request "I should talk to a lawyer." Pet. app. A-7, 22, 23.

One of the "circumstances" applied by the Colorado Supreme Court was to strip from the statement the respondent's use of slang so that the essential message could be focused upon. Pet. app. A-21, 22. Throughout the interview the respondent spoke in slang. For

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[1] Petitioner not only advocates abandonment of totality of the circumstances test, but also criticizes the Colorado Supreme Court for citing with approval *Michigan v. Johnson*, 475 U.S. 625, 633 (1986) where this Court ruled that a "broad, rather than narrow interpretation to a defendant's request for counsel" applies in the Sixth Amendment context. Petitioner's concern is unwarranted since the Colorado Supreme Court did not implement a "broad" approach, but rather, correctly invoked the totality of the circumstances test.

[2] The actual statement was, "Yea. Cause I, ya know, I'm not gunna lie man, ya know, I mean I should wait, and I should talk to a lawyer and this and that and ya know because I do want to go to trial on this." Pet. App. C-4.

example he said "ya know" over 100 times. Pet. app. C. During his request for counsel, "ya know" was said three times. In addition, the respondent inserted "and this and that" which was another slang term used elsewhere in the interview. This process is no different than that employed by a reasonable police officer when interviewing a person like the respondent or a person who either speaks a foreign language or has poor command of English. It is important to note, however, that the core message, "I should talk to a lawyer," was relied upon by the Colorado Supreme Court in its unadulterated and original form. It was merely the surrounding verbiage and slang that was not considered.

Another of the "circumstances" relied upon by the Colorado Supreme Court was that the respondent made his request for counsel early in the interviewing process. Pet. app. A-18. The respondent was advised of his rights, signed a waiver[3] and began telling a narrative of how some people came over to his house and behaved in a threatening way. Pet. app. C-2, 3. The interviewing officer intervened and asked "so you thought you were defending yourself when you shot at the car?" Pet app. C-4. It was at this point that the respondent

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[3] While Colorado correctly states that both the Colorado Supreme Court and the trial court found that the respondent had validly waived his *Miranda* rights, it is noteworthy that, when it came to orally asking the respondent whether he wished to waive his rights, the transcript is suspiciously silent. *See* pet. app. C. Investigator Needham orally advised the respondent of his *Miranda* rights. Pet. app. C-1. He twice asked whether the respondent understood his rights, but never asked whether the respondent wished to waive those rights. Pet. app. C-1, 2. Investigator Needham represented that "the waiver card, is that I have read the above rights and understand each of those, is that true?" To which the respondent answered, "Yea." Pet. app. C-1. Investigator Needham continued, "Okay, having those rights in mind when answering these questions for us. Okay. Sign for me." Thereafter, Investigator Needham launched into questioning. Apparently the only indication that the respondent was willing to waive his *Miranda* rights was his signing of the "waiver card." Pet. app. A-3.

made his request for counsel, which was "within minutes" of his *Miranda* advisement. Pet. app. A-18. The Colorado Supreme Court felt this was significant and was in contrast to *Davis* where the request for counsel was not made until one and one-half hours into the interrogation. Pet. app. A-11, 18. The Colorado Supreme Court also observed that the respondent attempted to bring up the issue later in the interview, but was ignored by Investigator Needham. Pet. app. A-6.

While the Colorado Supreme Court noted that this Court "encouraged but did not require clarification of a suspect's ambiguous reference," (pet. app. A-15) it observed that Investigator Needham ignored both of the respondent's references to a lawyer. Pet. app. A-5, 6, 7, 22. After the respondent made the statement, "I should talk to a lawyer," Investigator Needham ignored the request and immediately went back to the discussion of self-defense. Pet. app. A-5. After the second reference to a lawyer, Needham enticed the respondent by saying that he originally was going to ask for first degree murder charges, but based upon the respondent's willingness to discuss the case, he was "thinking maybe second [degree murder] or something else."[4] Pet. app. A-6. This interviewing technique is to be contrasted with several of the cases relied upon by Colorado, where subsequent clarifying

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[4] Three days later, the respondent was charged with murder in the first degree and other offenses. Pet. app. A-7. Further, Investigator Needham admitted that he had read the *Davis* case and "purposefully" ignored the respondent's request. Pet. app. B-8. Apparently officer Needham was well schooled in the post-*Davis* style of interrogation, which encourages interrogating officers to ignore requests for counsel.

questions by interrogating officers helped the reviewing court decide whether an unambiguous request had been made.[5]

Primarily the Colorado Supreme Court relied upon the actual words spoken by the respondent. Scrutiny turned to the word "should" which the Court defined as "to express duty, obligation, necessity, propriety, or expediency," relying upon Webster's Third New International Dictionary, 2104 (1961). Pet. app. A-23. Accordingly, the respondent was conveying a "necessity" by saying he should talk to a lawyer. The respondent submits that the Colorado Supreme Court could not have been more faithful or diligent in its application of the *Davis* doctrine and that Colorado's assertion to the contrary is unsupported by the record.

II. THIS COURT SHOULD NOT ABANDON THE TOTALITY OF THE CIRCUMSTANCES TEST WHEN DETERMINING WHETHER A REQUEST FOR COUNSEL IS UNAMBIGUOUS.

Colorado apparently argues that the totality of the circumstances test is inappropriate when determining whether a suspect has made an unambiguous request for counsel. Colorado makes this argument without citing any authority whatsoever. Apparently, Colorado is advocating a "words alone" analysis, again without citing authority. Such a claim is contrary to the dictates of *Davis*, itself, which required the determination to be made

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[5] *Medina v. Singletary*, 59 F.3d 1095 (11th Cir. 1995) (officers' follow-up questions aided the court in determining that the defendant had made an ambiguous request); *United States v. Scurlock*, (5th Cir. 1995)(interrogating agent's subsequent actions and questions, including asking the defendant again if she wished to talk to the agents, helped the reviewing court determine from "context" that defendant made an ambiguous request.); *Lord v. Duckworth*, 29 F.3d 1216 (7th Cir. 1994)(officer's "affirmative" response to the defendant's request for counsel important in determining that defendant did not desire to have an attorney present at that time).

under the "circumstances" facing the interrogating officer. *Davis*, 512 U.S. at 459. That language was no accident since *Edwards* itself delineated the standard for determining whether *Miranda* rights have been waived.

> It is reasonably clear under our cases that waivers of counsel must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege, a matter which depends in each case "upon the particular facts and circumstances surrounding that case, including the background experience and conduct of the accused. *Edwards v. Arizona*, 451 U.S. 477, 482 (1981) [quoting from *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)].

The words alone approach is also inconsistent with other judicial determinations made in the interrogation context. *See Schneckloth v. Bustamante*, 412 U.S. 218 (1973) (voluntariness of confession to be determined by the totality of circumstances); *North Carolina v. Butler*, 441 U.S. 369, 374 (1979)(waiver of *Miranda* rights to be measured by the "particular facts and circumstances surrounding the case"); *Wyrick v. Fields*, 459 U.S.42, 47 (1982) *per curiam* (*Edwards* requires use of the totality of circumstances test when suspect attempts to re-initiate interview); *Fare v. Michael C.*, 442 U.S. 707, 725 (1979) (waiver of *Miranda* rights to be determined by totality of the circumstances). Moreover, several of the cases cited by Colorado rely upon context and circumstances in determining whether an unambiguous request has been made.[6]

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[6] *Medina v. Singletary*, 59 F.3d 1095 (11th Cir. 1995) (from context the defendant's answer of "no" to whether he wished to talk to officers actually meant "yes"); *Lord v. Duckworth*, 29 F.3d 1216 (7th Cir. 1994) (from the surrounding "circumstances" the defendant's request for counsel was merely a statement that he needed one in the future); *United States v. Scurlock*, 52 F.3d 531 (5th Cir. 1995)(from "context" defendant's statement was that she needed an attorney in the future, rather than an immediate request for counsel).

Finally, Colorado gives us little insight into which of the circumstances should be ignored in determining whether an unambiguous request has been made. Are the words in the transcript the sole source? Do we sanitize the respondent's spoken word of its inflection and intonation? Do we ignore whether the request was made at the beginning, in the middle or at the end of interrogation? The Colorado Supreme Court had available to it, not only the transcript, but also the audio tape of the respondent's interview, along with the transcript of the suppression hearing. Pet. app. A-3. Based upon the *entire* record, the Colorado Supreme Court found an unambiguous request for counsel.

Colorado's assertion that the totality of the circumstances test be abandoned, is supported by no authority, including the lone dissenter in *Romero*, Justice Mularkey, who wrote that the totality of the circumstances test was appropriate. Pet. app. A-32.

III. THE COLORADO SUPREME COURT HAS NOT JOINED A "MINORITY OF JURISDICTIONS SEEKING TO UNDERMINE THE DICTATES OF *DAVIS*."

Several times in its petition, Colorado baldly claims that the Colorado Supreme Court has joined a minority of jurisdictions undercutting *Davis*, in contrast to a majority of other states and a majority of federal circuits. However, a faithful survey of the jurisdictions reveals not only that is there is no "minority" or "majority" split, but more importantly, that each case has been determined upon its own "facts and circumstances" as required by *Edwards* and *Davis*. Colorado's analysis is flawed because it fails to take into account the unique circumstances of each case and because it fails to focus upon the cases that were truly similar to the facts in *Romero*.

Statements similar to respondent's "I should talk to a lawyer," have almost uniformly been ruled to be unambiguous requests for counsel in other jurisdictions. In *Cannady v. Dugger*, 931 F.2d 752 (11th Cir. 1991), the court found the defendant's statement "I think I should call my lawyer," an unequivocal request for counsel.[7] See also, *Correll v. Thompson*, 63 F.3d 1279 (4th Cir. 1995)(defendant said he "thought he wanted an attorney" ruled to be unambiguous, relying upon *Cannady*). In *Smith v. Endell*, 860 F.2d 1528 (9th Cir. 1988), *cert. denied*, 498 U.S. 981 (1990), the court found identical words to those used in *Romero*, "I should talk to a lawyer," as an unequivocal request for counsel.

> The request was not ambiguous; Smith was uncertain whether the troopers considered him a suspect, but if they did, his intent was clear: "I should talk to a lawyer." In this respect his statement was not equivocal; there was no "might" or "maybe" or "perhaps."[8]
>
> *Smith*, 860 F.2d at 1531.

Colorado arbitrarily paints *Smith* and *Cannady* into a corner and labels them a "minority" viewpoint, yet Colorado offers no jurisdictions which have ruled, "I should talk to a lawyer" as ambiguous requests. Instead, Colorado compares these cases, which are on

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[7] Mr. Cannady's request is similar to the second request made in *Davis*. *Davis*, 512 U.S. at 455. Mr. Davis's first request for counsel, "Maybe I should talk to a lawyer," was ruled to be ambiguous. However, his second request made later in the interview, "I think I want a lawyer," precipitated a cessation of the interrogation.

[8] Colorado summarily dismisses *Smith* and *Cannady* because they were decided "pre-*Davis*." However, Colorado's reasoning is flawed. While *Davis* attached a different consequence to an ambiguous request for counsel, it did not disturb the calculus of *how* courts will determine whether ambiguity exists, nor the long line of cases making such determinations. The only difference in pre-*Davis* cases is that some jurisdictions were requiring interrogating officers to ask clarifying questions when an ambiguous request was made. The *Smith* case is extremely reliable as precedent and, in fact, prophetic, since the court found there were no words of equivocation like "maybe" preceding the statement, "I should talk to a lawyer." Of course, it was the "maybe I should talk to a lawyer" which constituted the ambiguous request in *Davis*.

point, with cases from other jurisdictions which are not. For example, Colorado primarily relies upon *State v. Parker*, 886 S.W.2d 908 (Mo. 1994), *cert. denied*, 514 U.S. 1098 (1995). However, a careful reading of *Parker* reveals it is of little precedental value. Mr. Parker was being interviewed by interrogating officers having been Mirandized. After making incriminating statements, Parker said he "ought to talk to an attorney" which prompted the officers to leave the room. Within five minutes, Parker opened the door and asked one of the officers, by name, to return to the room. He was given another *Miranda* advisement and made further statements. This prompted the court to observe,

> Even if Parker did invoke the right [to counsel], he promptly initiated further communication by voluntarily calling an officer back into the room. Thus, there was no Fifth Amendment violation.
> *Parker*, 336 S.W.2d at 918.

Obviously the court was relying upon the language in *Edwards* which permits further interrogation, even after a request for counsel is made, when the accused "initiates further communication, exchanges, or conversations with the police." *Edwards*, 451 U.S. at 484-485. The court in *Parker* gratuitously added that the word "ought" did not constitute an unambiguous request for counsel. However, given the totality of the circumstances, the underlying factual predicate of *Parker* is extremely dissimilar to that found in *Romero*. Investigator Needham did not leave the room when the respondent said that he should talk to an attorney. Neither did the respondent unilaterally re-initiate conversations with the police.

Colorado's reliance on *Lord v. Duckworth*, 29 F.2d 1216 (7th Cir. 1994) is faulty for the same reasons. Initially it is important to note that the court in *Lord* cited with approval *Cannady* and *Smith*. However, the court went on to distinguish those cases based upon the

context in which Mr. Lord stated, "I can't afford a lawyer, but is there any way I can get one?" The court emphasized that Mr. Lord had already confessed in a lengthy tape recorded statement and had agreed to assist the police in searching for the murder weapon.[9] Furthermore, the court found it important that after Mr. Lord asked if he could get a lawyer, the interrogating officer answered in the affirmative. Instead of pursuing the matter, the defendant added, he would also like to see a doctor. Under these "circumstances" the court correctly found that Mr. Lord was merely referring to his need to consult with an attorney at a future time.[10]

The few remaining cases, dubbed by Colorado as the "majority" position, simply are not helpful in supporting that conclusion. For example, in *Diaz v. Senkowski*, 76 F.3d 61 (2nd Cir. 1996), the court found the defendant's statement, "Do you think I need a lawyer?" an ambiguous request. That request was so different from respondent's and so facially ambiguous that it is unclear why Colorado relies upon it. It certainly does not support a

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[9] Colorado relies on several cases where the request for counsel came at the end of the interrogation rather than, as in this case, in the beginning. *See Lord*; *Diaz v. Senkowski*, 71 F.3d 61 (2nd Cir. 1996)(defendant asked interrogating officers, after four hours of questioning, "Do you think I need a lawyer"); *United States v. Scurlock*, 52 F.3d 531 (5th Cir. 1995)(the defendant gave a lengthy confession, was then told by the agent she would probably be indicted, which prompted her to say she needed an attorney).

[10] Colorado also contends that *Lord* and *Scurlock* support its position that respondent was merely stating that he would need an attorney in the future. However, *Lord* and *Scurlock* are easily distinguishable on their facts. In both cases the alleged request for counsel came at the end of the interrogation, rather than at the beginning. Moreover, the respondent's own words dispel any inference that he was alluding to the future. He said, "**I should wait** and I should talk to an attorney." Obviously the respondent was stating that he should wait to talk to investigator Needham until he had a lawyer, thus expressing the immediacy of the situation, rather than the need for an attorney in the future.

finding that a majority/minority split has developed, after *Davis*. In summary, Colorado alleges but fails to demonstrate that there is any kind of a split among the jurisdictions or that the Colorado Supreme Court has joined a "minority" of jurisdictions seeking to "undermine" *Davis*.

The brief filed by *amici* suffers from the same maladies. Supporting what it calls the "majority" position, it relies upon the following ambiguous requests: "Is it going to piss y'all off if I ask for my -- to talk to a friend that is an attorney?[11]"; "Do you think I need an attorney?[12]"; "I might need one. If I need one[13]"; The defendant "would talk to [her] lawyer tomorrow[14]"; "I'll be honest with you, I am scared to say anything without talking to my lawyer[15]"; "maybe I should speak with a lawyer[16]"; defendant "might need a lawyer[17]"; "Do I need an attorney?[18]"; "What if I ask for an attorney?"[19] These cases involving obviously ambiguous requests shed little light on the case at bar and do little to demonstrate the majority/minority split alleged. Other cases cited by *amici* with seemingly

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[11] *Brown v. State*, 668 So.2d 102 (Ala. Cr. App. 1995).

[12] *Higgins v. State*, 879 S.W.2d 424 (Ark. 1994).

[13] *Henry v. State*, 462 S.E.2d 737 (Ga. 1995).

[14] *Luallen v. State*, 465 S.E.2d 672 (Ga. 1996).

[15] *Midkiff v. Commonwealth*, 462 S.E.2d 112 (Va. 1995).

[16] *United States v. Menzer*, 29 F.3d 1223 (7th Cir. 1994) *cert. denied* 513 U.S. 1002 (1994).

[17] *State v. Morgan*, 559 N.W.2d 603 (Iowa 1997).

[18] *State v. Jones*, 914 S.W.2d 852 (Mo. App. 1996).

[19] *State v. Kennedy*, 479 S.E.2d 838 (S.C. App. 1996).

less ambiguous requests for counsel, are easily distinguished on their case specific facts and circumstances. For example, *amici* rely upon *Tucker v. State*, 491 S.E.2d 420, 421 (Ga. App. 1997)("I guess I need a lawyer, because I wasn't even there when that happened"). However, *amici* fail to disclose a very important portion of the context of the statement. Mr. Tucker was asked if he wanted to talk to officers about the charges. Mr. Tucker responded, "I don't know what to do. I guess I need a lawyer because I wasn't even there when that happened. I was tied up in the attic with ropes." Under these circumstances, it was an easy matter for the Georgia court to rule that Mr. Tucker was equivocal and that guessing he needed a lawyer did not equate to a request for counsel. *Amici* fail to disclose equally important information in *Parker v. State*, 917 P.2d 980, 983 (Okl. Cr. 1996) ("I would like to talk to an attorney"). The full context of Mr. Parker's statement reveals his equivocation. When asked if he would give a statement, he said, "I'll give you some statements, I would like to talk to an attorney." This equivocation prompted interrogating officers to ask follow-up questions which revealed to the Oklahoma court that Mr. Parker was equivocating and that he did want to give "some statements." *Amici* also rely upon *State v. Wesley*, 691 So.2d 772, 774 (La. App. 1997)("Can I get me a lawyer before I talk? Like the man said on that thing right there?"). The Louisiana court found the statement to be equivocal because it was a question, rather than an assertion of his rights. In addition, interrogating officers asked several times whether the defendant wished to have the questioning cease. Notwithstanding, the defendant insisted on telling his side of the story. From these cases, it is easy to determine that *amici* have not revealed all of the pertinent facts in the cases they cite. A fair review of those cases indicates that in each instance, the

court made a fact-specific determination, based upon all of the circumstances in the case, in deciding whether a particular request was "ambiguous" or not. That is the same process that was used by the Colorado Supreme Court in *Romero*. To the extent *amici* have placed partial information before the Court to support their conclusion that a minority of jurisdictions are eroding *Davis*, their conclusion is unfounded.

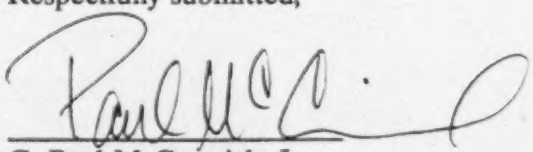
Amici employ the same tactic as Colorado by taking the few cases which have ruled "I should talk to a lawyer" to be unambiguous, and arbitrarily calling them the "small but troubling minority of courts unwilling to apply *Davis'* bright line rule." The real failure of the *amici*, and for that matter Colorado, is the inability to point to any case that has language substantially similar to "I should talk to a lawyer," and which is contextually similar to respondent's case, where the court found the request to be ambiguous or equivocal. The respondent's search of the various jurisdictions reveals no such case. This totally undermines the allegation that there is a majority/minority application of the *Davis* doctrine. Instead, the careful reading of all the cases cited by Colorado and *amici* results in the inescapable conclusion that each lower court has conscientiously applied the *Davis* rule to the "facts and circumstances" of each case.

CONCLUSION

The Colorado Supreme Court properly articulated the standard in *Davis*, diligently applied the totality of the circumstances test to the facts of this case and correctly ruled that the respondent's statement "I should wait and I should talk to a lawyer" was an unambiguous request for counsel. The totality of the circumstances test is the correct measure for determining whether a person being interrogated has asserted his or her *Miranda/Edwards*

rights. Colorado has failed to demonstrate that the decision in *Romero* was contrary to *Davis* or that *Romero* is consistent with the "minority" of other jurisdictions which are seeking to "undermine" the dictates of *Davis*. Colorado's petition for a writ of *certiorari* should, therefore, be denied.

Respectfully submitted,



G. Paul McCormick, Jr.
Counsel of Record

McCormick & Christoph, P.C.
1406 Pearl Street, Suite 200
Boulder, Colorado 80302
(303) 443-2281

Counsel for Respondent

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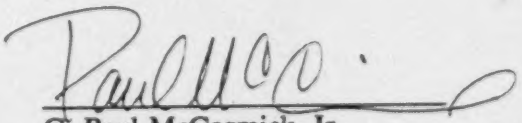
CERTIFICATE OF SERVICE

I, G. Paul McCormick, Jr., a member of the Bar of this Court, hereby certify that on this 30th day of July, 1998, one copy of Respondent's Brief in Opposition in the above-entitled case, was mailed First Class Postage prepaid to the following:

John Daniel Daily
Counsel of Record
Colorado Attorney General's Office
1525 Sherman Street, 5th Floor
Denver, Colorado 80203

I further certify that all parties required to be served have been served.



G. Paul McCormick, Jr.
Counsel for Respondent